

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

RANDY MARLIN HAYNES,

Petitioner,

v.

THOMAS BIRKETT,

Respondent.

CASE NO. 2:07-CV-14520-DT
HONORABLE VICTORIA A. ROBERTS
UNITED STATES DISTRICT JUDGE

**OPINION AND ORDER DENYING THE
MOTION FOR A CERTIFICATE OF APPEALABILITY**

On July 23, 2008, this Court issued an opinion and order denying Petitioner's application for habeas relief brought pursuant to 28 U.S.C. § 2254. This Court also denied Petitioner a certificate of appealability but granted him leave to appeal *in forma pauperis*. *Haynes v. Birkett*, No. 2008 WL 2858676 (E.D. Mich. July 23, 2008).

Petitioner has now filed a motion for certificate of appealability with respect to his second and third claims, which the Court construes as a motion for reconsideration of its prior opinion and order. For the reasons stated below, the motion for a certificate of appealability is **DENIED**.

Because this Court previously denied Petitioner a certificate of appealability when it denied the petition for writ of habeas corpus, the Court will construe Petitioner's motion for a certificate of appealability as a motion for reconsideration of the Court's prior order to deny a certificate of appealability in this case. *See e.g. Jackson v. Crosby*

437 F. 3d 1290, 1294, n. 5 (11th Cir. 2006).

U.S. Dist.Ct. Rules, E.D. Mich. 7.1 (h) allows a party to file a motion for reconsideration. However, a motion for reconsideration which presents the same issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. *See Michigan Regional Council of Carpenters v. Holcroft L.L.C.* 195 F. Supp. 2d 908, 911 (E.D. Mich. 2002)(*citing to* U.S. Dist.Ct. Rules, E.D. Mich. 7.1 (g)(3)). A motion for reconsideration should be granted if the movant demonstrates a palpable defect by which the court and the parties have been misled and that a different disposition of the case must result from a correction thereof. *Id.*

Other than conclusory or unsupported allegations, petitioner has failed to advance any arguments in his request for a certificate of appealability which shows that this Court erred in denying the petition for writ of habeas corpus and in declining to issue a certificate of appealability. A habeas petitioner's conclusory assertion that jurists of reason would find his or her claims to be debatable is insufficient to warrant the issuance of a certificate of appealability. *See Babgy v. Saffle*, 53 Fed. Appx. 25, 28 (10th Cir. 2002). Petitioner's request for reconsideration will therefore be denied, because Petitioner is merely presenting issues which were already ruled upon by this Court, either expressly or by reasonable implication, when the Court denied Petitioner's application for writ of habeas corpus and denied him a certificate of appealability. *See Hence v. Smith*, 49 F. Supp. 2d 547, 553 (E.D. Mich. 1999).

IT IS ORDERED that the Motion for Certificate of Appealability [Court Dkt Entry # 15] is **DENIED**.

S/Victoria A. Roberts

Victoria A. Roberts
United States District Judge

Dated: September 22, 2008

The undersigned certifies that a copy of this document was served on the attorneys of record and Randy Haynes by electronic means or U.S. Mail on September 22, 2008.

s/Carol A. Pinegar
Deputy Clerk